

REMARKS/ARGUMENTS

The Office Action mailed May 13, 2005, has been received and reviewed. Claims 1, 3, 10 through 20, 22, 28 through 61, and 64 are currently pending in the application. Claims 1, 3, 10 through 20, 22, 28 through 61, and 64 stand rejected. Applicants have amended claims 12, 13, 15, 16, 31, 47, 51, 53, and 56 in order to more particularly claim the subject matter of the invention and to correct minor typographical errors. Applicants respectfully request reconsideration of the application as amended herein.

Objections to Claims

Claims 12, 13, 15, 16, 18, 31, 47, and 51 are objected to under 35 U.S.C. § 112, fourth paragraph, and 37 CFR 1.75(c) as being of improper dependent form for failing to further limit the subject matter of the independent claim to which the dependent claims refer. Claim 12 has been amended to depend from claim 1 and further distinguishes from said claim in that it further comprises a drug-containing chamber. Applicants traverse the objection to claims 13, 15, 16, 18, 31, 47, and 51, as each of these claims contain express limitations drawn to the range of elevated temperature and the related period of time for which the rate controlling membrane is characterized. As such, Applicants respectfully disagree with the Examiner's conclusion and request withdrawal of the objections to the pending claims.

35 U.S.C. § 112 Claim Rejections

Claims 46, 49 and 54 stand rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In order to expedite prosecution of the present application, Applicants have canceled claims 46, 49, and 54 without prejudice to pursue the same subject matter in a related application.

Double Patenting Rejections Based on U.S. Patent No. 6,375,978

Claims 1, 3, 10, 13 through 16, 34, 35, 39 through 47, 53, 55, 56, and 59 through 61 (Group I) stand rejected under the judicially created doctrine of obviousness-type double

patenting as being unpatentable over claims 1, 2, 10, and 13 through 16 of U.S. Patent No. 6,375,978.

Claims 17 through 20, 22, 28 through 31, 48 through 51, 54, 57, and 58 (Group II) stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 17 through 20, 22, and 28 through 31 of U.S. Patent No. 6,375,978.

Claims 11, 12, 32, 33, 36 through 38, 52, and 64 (Group III) stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 11, 32, 33, and 35 of U.S. Patent No. 6,375,978.

In order to avoid further expenses and time delay, Applicants elect to expedite the prosecution of the present application by filing a terminal disclaimer to obviate the double patenting rejections in compliance with 37 CFR §1.321 (b) and (c). Applicants' filing of the terminal disclaimer should not be construed as acquiescence in the Examiner's double patenting or obviousness-type double patenting rejections. Attached is the terminal disclaimer and accompanying fee.

ENTRY OF AMENDMENTS

The amendments to claims 12, 13, 15, 16, 31, 47, 51, 53, and 56 above should be entered by the Examiner because the amendments are supported by the as-filed specification and drawings and do not add any new matter to the application.

CONCLUSION

Claims 1, 3, 10-20, 22, 28-45, 47, 48, 50-53, 55-61, and 64 are believed to be in condition for allowance, and an early notice thereof is respectfully solicited. Should the Examiner determine that additional issues remain which might be resolved by a telephone conference, he is respectfully invited to contact Applicants' undersigned attorney.

Respectfully submitted,



Edgar R. Cataxinos
Registration No. 39,931
Attorney for Applicant(s)
TRASKBRITT
P.O. Box 2550
Salt Lake City, Utah 84110-2550
Telephone: 801-532-1922

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